the words and modes of expression are ambiguous, the intention controls the language used. *Phillips* v. *Davies,* 92 N. Y. 199; *Blair* v. *Blair,* 82 Kan. 464.

WILLS—DEED IN FORM RESERVING OPERATION UNTIL DEATH OF GRANTOR. —The appellant executed an instrument in the form of a warranty deed, to his son, in consideration of his verbal promise that he would care for and support the appellants. The instrument was headed "Warranty Deed" and was referred to in the body of the instrument as a "deed," and in the acknowledgement as a "deed" conveying land to the grantee. But in the habendum clause it was provided "that the deed is inoperative prior to the death of" the appellants. This suit is in equity to cancel the instrument, the contention of the appellants being that it is a will and not a deed, and therefore revocable. *Held,* that this instrument was not a will, but a deed, the title to the land passing through the operation of the granting clause, but the possession was reserved to the grantors (the appellants) during their lives. Bill dismissed. *Sutton et al.* v. *Sutton,* (Ark., 1919) 216 S. W. 1052.

Between a deed and a will the following fundamental distinctions are to be noted: under the former, normally, a present interest passes, under the latter no interest passes until the death of the testator. The former is a completed legal act, beyond the power of the grantor to undo, the latter is ambulatory. 17 MICH. L. REV. 413. In determining whether an instrument is a deed or a will the manifest intention of the party making it, as gathered from all the language used in the writing, is controlling. *Jones* v. *Caird,* 153 Wis. 384; *Sharp* v. *Hall,* 86 Ala. 110; *Phillips* v. *Thomas Lumber Co.,* 94 Ky. 445; *Bassett* v. *Budlong,* 77 Mich. 338; *Wall et al.* v. *Wall,* 30 Miss. 91. Moreover the courts will, where they can reasonably do so, construe an instrument so as to give it effect, and reject a construction which would deprive it of any effect. *Hunt* v. *Hunt,* 119 Ky. 39; *Jones* v. *Caird, supra; Love* v. *Blauw,* 61 Kan. 496; *Wilson* v. *Carrico,* 140 Ind. 533. As would be expected from the indefinite nature of the above methods of construction, the authorities are in conflict as to the effect of clauses reserving the operation of such an instrument,—as in the principal case,—until the death of the maker. Some cases have held such instruments to be testamentary in character and to be revocable even though delivered and in some recorded. *Turner* v. *Scott,* 51 Pa. St. 126; *Bigley* v. *Souvey,* 45 Mich. 370; *Hazelton* v. *Reed,* 46 Kan. 73; *Murphy* v. *Gabbert,* 166 Mo. 596; *Carlton* v. *Cameron,* 54 Tex. 72. On the other hand many cases have held, as did the court in the principal case, that a present interest in the land passed immediately through the operation of the granting clause, but the possession and enjoyment were reserved to the grantors by the reservation clause. *Wilson* v. *Carrico, supra; Prentico* v. *Hays,* 75 Kan. 76; *Hunt* v. *Hunt, supra.* In still another case while they held such an instrument a deed, and not a will, the court said that it operated to create an estate *in futuro. Abbott* v. *Holway, 72* Me. 298. And this conflict is still to be found among the later cases, some holding that such instruments are wills, *Thomas* v. *Byrd,* 112 Miss. 692; *Cox.* v. *Reed,* 113 Miss.

488; and others holding them to be deeds, which pass a present interest and reserve the possession to the grantor for life, *Shaull* v. *Shaull,* 182 Ia. 770; *Lovenskoild* v. *Casas,* 196 S. W. 629; and the principal case. The reason for the conflict seems to lie in the desire of some courts to adhere to common law rules and strict interpretation, *Turner* v. *Scott, supra,* and the cases following it, while other courts lean to a liberal interpretation wherever necessary to uphold the apparent intention of the parties, *Wilson* v. *Carrico, supra,* and the cases following it. Also see 16 MICH. L. REV. 586; 17 MICH. L. REV. 413, and the article by Dean Ballantine, *supra.*

WILLS—NEXT OF KIN—TIME FOR ASCERTAINING CLASS.—The will of the testator settled the residue of his personal estate on his three daughters, with cross remainders, and provided that on failure of all these trusts such residue should be in trust "* * * for such person or persons as on the failure of such trusts should be his next of kin and entitled to his personal estate under the statutes for the distribution of the personal estates of intestates." The trusts failed and it was *held* that those entitled to take were the next of kin ascertained at the death of the testator. The literal and ordinary meaning of the words "next of kin" is to be preferred to an artificial meaning derived by supposing that the testator meant those who would have been his next of kin if he had died at the time of the failure of the trusts. *Carter* v. *Hutchinson,* [1919] 2 Ch. 17.

Where the class designated to take under the will is described as those "then entitled," the time for the ascertainment of the class is at the death of the testator and not at the time when the gift is to go over. *Mortimore* v. *Mortimore,* L. R. 4 App. Cas. 448; *Dove* v. *Torr,* 128 Mass. 38. Essentially the same problem is presented and the same result reached when different words of relationship than "next of kin" are used. *Holloway* v. *Holloway,* 5 Ves. 399, (heirs-at-law); *Re Nash,* 71 L. T. 5, (nearest relatives); *Bullock* v. *Downes,* 9 H. L. Cas. 1, (relations). The fact that the heirs or next of kin are named in the plural and that there is but one person answering that description at the testator's death, does not show that the testator did not intend the class to be ascertained at that time. *Ware* v. *Rowland,* 2 Phil. Ch. 635; *In re Trusts of Barber's Will,* 1 Sm. & G. 118. The fact that the distribution is to take place on the death of A. does not prevent A's taking as one of the next of kin. *Lee* v. *Lee,* 1 Dr. & Sm. 85. "* * * it is not sufficient, in order to exclude him, to show the absence of a special intention to *include* him; you must show a clear and unambiguous indication of an intention to *exclude* him." *Id.,* p. 89. Even where words of survivorship are part of the description of the class, such as "living at the time of the trusts failing," or "then living" are held not to refer to the ascertainment of the class but merely to show which of the class are to take. *Brook* v. *Whitton,* [1910] 1 Ch. 278; *Re Nash, supra.* But see, *contra, Tiffin* v. *Longman,* 15 Beav. 275; *Eagles* v. *Le Breton,* L. R. 15 Eq. 148. The decision in the latter case, however, was perhaps incorrectly reported. Note, 71 L. T. 7. If the clear intent of the testator is to fix the time of ascertainment of the class at